

1  
2  
3  
4  
5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**

7 \* \* \*

8 DEUTSCHE BANK NATIONAL TRUST  
9 COMPANY, AS TRUSTEE FOR GSAA  
10 HOME EQUITY TRUST 2006-17, ASSET-  
BACKED CERTIFICATES SERIES 2006-17,

11 Plaintiff,

12 v.

13 EDWARD KIELTY TRUST; an entity of  
14 unknown form; CANYON TRAILS  
15 HOMEOWNERS ASSOCIATION, a Nevada  
16 non-profit corporation; TERRA WEST  
COLLECTIONS GROUP, LLC d/b/a  
ASSESSMENT MANAGEMENT SERVICES;  
DOE INDIVIDUALS I through X; and ROE  
CORPORATIONS I through X, inclusive,

17 Defendants.

18  
19 EDWARD KIELTY TRUST, a Nevada Trust,

20 Counterclaimant,

21 v.

22 DEUTSCHE BANK NATIONAL TRUST  
23 COMPANY, AS TRUSTEE FOR GSAA  
HOME EQUITY TRUST 2006-17, ASSET-  
BACKED CERTIFICATES SERIES 2006-17,

24 Counterdefendant.  
25

26 **I. INTRODUCTION**

27 Before the Court are is Plaintiff Deutsche Bank National Trust Company's ("Deutsche  
28 Bank") Motion for Reconsideration. ECF No. 54. For the following reasons, the Court grants the

Case No. 2:17-cv-01759-RFB-BNW

ORDER

1 motion.

## 2 **II. PROCEDURAL BACKGROUND**

3 This matter arises from a nonjudicial foreclosure sale conducted by a homeowners'  
4 association under Nevada Revised Statutes ("NRS") Chapter 116 in 2014. ECF No. 1.

5 Plaintiff Deutsche Bank sued Defendants Edward Kiely Trust ("the Trust"), Canyon Trails  
6 Homeowners Association (the "HOA"), and Terra West Collections Group, LLC dba Assessment  
7 Management Services ("Terra West") on June 26, 2017. Id. In the complaint, Deutsche Bank  
8 alleges sought declaratory relief that a nonjudicial foreclosure sale conducted Chapter 116 of the  
9 Nevada Revised Statutes ("NRS") did not extinguish the deed of trust it held on a Las Vegas  
10 property. On July 12, 2017, Deutsche Bank also filed a notice of lis pendens. ECF No. 4.

11 On August 14, 2017, the Trust answered the complaint and filed two counterclaims against  
12 Deutsche Bank: (1) declaratory relief or quiet title under NRS 30.010 *et seq.*, NRS 40.010, and  
13 NRS 116.3116 and (2) preliminary and permanent injunction. ECF No. 9. Deutsche Bank  
14 answered the counterclaim on September 21, 2017. ECF No. 15.

15 On October 6, 2017, Deutsche Bank moved the Clerk of the Court for entry of default  
16 against Terra West and the HOA. ECF Nos. 19, 20. The Clerk entered default against both  
17 Defendants. ECF No. 21. But the HOA was reinstated in the matter by the parties' stipulation to  
18 set aside the Clerk's entry of default as to the HOA. ECF No. 23, 24. The HOA then answered  
19 the complaint. ECF No. 25.

20 The Trust, Deutsche Bank, and the HOA all moved for summary judgment on May 11,  
21 2018. ECF Nos. 33, 34, 37. On March 31, 2019, the Court granted and denied in part the Trust and  
22 the HOA's motions for summary judgment, and denied Deutsche Bank's motion for summary  
23 judgment in its entirety, on the basis that there questions of material fact as to the amount of the  
24 superpriority portion of the lien. ECF No. 52.

25 Deutsche Bank moved for reconsideration of the Court's order on April 18, 2019. ECF No.  
26 54. Responses and replies were filed. ECF Nos. 55, 57 – 59. On May 15, 2019, the Court held a  
27 hearing on the motion. ECF No. 61. The Court took the motion under submission pending  
28 supplemental briefing. Id. The supplemental briefing has been filed. ECF Nos. 62, 63. This written

1 order now follows.

### 2 **III. LEGAL STANDARD**

3 Rule 59(e) of the Federal Rules of Civil Procedure allows parties to move to alter or amend  
4 a judgment within twenty-eight days of entry of the judgment. Fed. R. Civ. P. 59(e). “Whether or  
5 not to grant reconsideration is committed to the sound discretion of the court.” Navajo Nation v.  
6 Confederated Tribes and Bands of the Yakama Indian Nation, 331 F.3d 1041, 1046 (9th Cir. 2003).  
7 However, “a motion for reconsideration should not be granted, absent highly unusual  
8 circumstances, unless the district court is presented with newly discovered evidence, committed  
9 clear error, or if there is an intervening change in the controlling law.” Marlyn Nutraceuticals, Inc.  
10 v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotation and citation  
11 omitted). A motion for reconsideration “may *not* be used to raise arguments or present evidence  
12 for the first time when they could reasonably have been raised earlier in the litigation.” Id. (internal  
13 quotation and citation omitted). Moreover, “[m]otions for reconsideration are disfavored. A  
14 movant must not repeat arguments already presented unless (and only to the extent) necessary to  
15 explain controlling, intervening law or to argue new facts. A movant who repeats arguments will  
16 be subject to appropriate sanctions.” LR 59-1.

### 19 **IV. DISCUSSION**

20 In its March 31, 2019 Order, the Court found that there was a dispute of material fact as to  
21 whether the superpriority portion of the lien had been paid. After the Court’s decision, Deutsche  
22 Bank now moves the Court to reconsider its position on this issue in light of the Nevada Supreme  
23 Court’s ruling in Bank of America, N.A. v. SFR Investments Pool 1, LLC (“Diamond Spur”),  
24 which came out after the parties had already briefed their summary judgment motions. 427 P.3d  
25 113 (Nev. 2018). In Diamond Spur, the Nevada Supreme Court found that tender of nine months’  
26 worth of HOA assessments, absent any indication of charges of maintenance or nuisance  
27 abatement, could preserve a deed of trust after a nonjudicial HOA foreclosure sale. Id. at 117–18.  
28

1 Deutsche Bank argues that the evidence in the record demonstrates that Deutsche Bank's  
2 predecessor-in-interest tendered nine months of HOA assessments and that because there was no  
3 evidence in the record of maintenance or nuisance and abatement charges, Diamond Spur controls  
4 and summary judgment should be granted in its favor.

5 The Trust argues in opposition that Deutsche Bank did not address the possibility of there  
6 being maintenance and nuisance abatement charges, and that the Court already considered  
7 Diamond Spur in its analysis when it granted Deutsche Bank's leave to file supplemental authority.

8 At a May 15, 2019 hearing on the motion for reconsideration, the Court instructed defense  
9 counsel for the Trust to identify any documents from the record that established whether there  
10 were maintenance and nuisance abatement charges. The Court specifically emphasized that it was  
11 not reopening discovery or allowing for the submission of new evidence.

12 Yet that is exactly what the Trust has done, producing for the Court a document that was  
13 not part of the record. The document is an account history report for the property, that, in this  
14 specific form, was not previously provided to the Court. The Trust identifies four charges that  
15 "could" be considered maintenance and nuisance abatement charges.

16 Deutsche Bank argues that the document is new evidence and should be not be considered  
17 by the Court. The Court agrees and will not consider the Trust's documents. The Court also  
18 incorporates by reference its previous factual findings. Accordingly, the Court shall grant Deutsche  
19 Bank's motion for reconsideration, as Diamond Spur was an intervening change of controlling  
20 law.

21 The Court also takes this opportunity to correct its prior order to the extent that it held that  
22 whether the Trust was a bona fide purchaser was a question of material fact. The Court corrects  
23 this finding in light of Diamond Spur's clear holding that whether the buyer is a bona fide  
24 purchaser is irrelevant when there is a defect in the sale that renders it void as to the superpriority  
25 portion of the lien. Diamond Spur, 427 P.3d at 121.

## 26 V. CONCLUSION

27 **IT IS ORDERED** that Deutsche Bank National Trust Company's Motion for  
28 Reconsideration (ECF No. 54.) is GRANTED. The Court quiets title and declares that Defendant


1 Edward Kielty Trust acquired the property subject to Deutsche Bank's deed of trust.

2 **IT IS FURTHER ORDERED** that the Court's prior holding that whether Defendant  
3 Edward Kielty is a bona fide purchaser is a question of fact is stricken from the March 31, 2019  
4 Order (ECF No. 52) in light of this Order's analysis.

5 **IT IS FURTHER ORDERED** that the notice of lis pendens (ECF No. 4) filed in this case  
6 be expunged.

7 The Clerk of the Court is instructed to enter judgment accordingly and close the case.

8 DATED: March 25, 2020.

9  
10   
11 **RICHARD F. BOULWARE, II**  
12 **UNITED STATES DISTRICT JUDGE**  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28